

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

RAMON ARMAS BORRERO, JR.,
Plaintiff

vs.

CASE NO. 5:04CV165-RH/WCS

OFFICER McDONALD, et al.,
Defendants

**PLAINTIFF'S RESPONSE TO THE DEFENDANTS MOTION
TO DISMISS FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES**

Plaintiff, pro se, moves this Court to dismiss the Defendants motion to dismiss due to the plaintiff having exhausted Administrative remedies as to present action. As grounds Plaintiff states:

STATEMENT OF FACTS

- ① After said incident occurred where plaintiff was beaten by Correctional Officer on 11/28/02 the Plaintiff filed an emergency grievance concerning this incident which was suppose to have gone directly to the Secretary of D.O.C.
- ② The Plaintiff wrote said grievance and placed it in the institutional mailing system for processing on 12/2/02.
- ③ On 12/3/02 the Plaintiff cut his wrist so that he would be removed from the Dorm due to fear of further abuse.
- ④ A John Doe white male rank of Captain or Lieutenant accompanied by a Jane Doe Nurse on 12/5/02 came to where the plaintiff was housed to interview and question him.
- ⑤ The John Doe possessed in his hands the Emergency Grievance written by the Plaintiff which was suppose to have gone to the Secretary of F.D.O.C. and not remained at the institution.
- ⑥ John Doe told the JANE Doe Nurse to see if I had any marks.
- ⑦ Jane Doe Nurse advised him that a bruise on the Plaintiff's left ear was caused by a punch.
- ⑧ Both left.
- ⑨ Plaintiff later received the receipt for said grievance but never a response.
- ⑩ The grievance Log Number is 02-12025.

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- (1) The subject listed on the receipt states 5 Discipline.
- (2) Although the subject was improperly listed the Plaintiff wrote no other grievance during the period of 11/28/02 and 12/3/02.
- (3) After grieving to the Secretary of D.O.C. there is no other ~~admin~~ administrative remedy.
- (4) The F.D.O.C. is required to retain a copy of all grievances for a period of 4 years
- (5) F.D.O.C. should still have a copy of said grievance.
- (6) Plaintiff even after being transferred to SANTA ROSA C.I. filed another emergency grievance between 12/19/02 and February of 2003
- (7) The Plaintiff did not receive a response or even a receipt as to this grievance.

LEGAL ARGUMENT

The plaintiff's Law Suit is in compliance with 42 U.S.C.1997e. The plaintiff filed an emergency grievance directly to the Secretary of F.D.O.C. The highest and last level, leaving no other remedy except 1983 Civil Rights complaint. The plaintiff has provided proof see exhibit A that he filed a grievance. The Defendant alleges that the grievance concerns other nature, yet the Defendant has not provided this court with said grievance as proof. Until the Defendant provides this court with said grievance as evidence showing that said grievance does not pertain to the current matter, his allegation is unsubstantiated.

The Defendant alleges that the grievance log presented concerned discipline. If that were true no informal would have been necessary to proceed if it ~~concerned~~ concerned discipline. Therefore either the person who filled out said receipt mistakenly listed discipline as the subject or is under the impression that abuse is a form of discipline.

Therefore as long as the plaintiff claims that he exhausted administrative remedies and even presented a document exhibit A in support of said claim the Defendant's motion to dismiss should be dismissed. The Plaintiff put forth due diligence in regards to exhausting administrative remedies and can not force prison officials to respond to a grievance. As long as a claim does not fail to alleged the requisite exhaustion of remedies it is sufficient. ^{See} Rivera v. Allen 144 F.3d 719.

CONCLUSION

The Plaintiff did in fact exhaust administrative remedies concerning this matter rendering the Defendants Motion as moot. In addition the Defendant failed to present proper evidence to -wit grievance log # 02-12025 to support his allegation that said grievance does not pertain to ~~is~~ the present~~ed~~ action. Thus the Defendant Motion to Dismiss should be dismissed due to it being improper, and incomplete, as well as it has been refuted by the Plaintiff.

Respectfully submitted,

12/12/05

Ramon Boeroto X27467

F.S.P. B-1321

7819 N.W. 228TH ST.

Raiford, FL 32026

OATH OF VERIFICATION

UNDER PENALTIES OF PERJURY, I RAMON ARMAS BORROTO,JR., declare that I have read the foregoing document and that the facts stated herein are true and correct.

1/25/05

R.B.
RAMON BORROTO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing has been furnished turned into the hands of an institution official to be mail by U.S. MAIL Postage Prepaid to:

Assistant Attorney General

Caryl Kilinski

The Capitol - PL 01

Tallahassee, FL 32399-1050

ON this 31 day of JANUARY, 2005.

R.B.

RAMON BORROTO X27467

Florida State Prison B-1321

7819 N.W. 228TH ST.

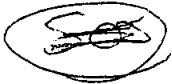
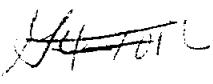
RAIFORD, FL 32026

LEGAL MAIL
PROVIDED TO
FLORIDA STATE PRISON
DATE 1/31/05 FOR MAILING.
INMATES INITIALS RB

(4)

Exhibit A

PART C - RECEIPT (TO BE COMPLETED BY DC STAFF)

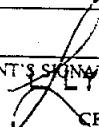
RETURN TO: ALTERNATE Housing  

LAST BORRERO MIDDLE INITIAL RAMON

NUMBER X27467 INSTITUTION WASHINGTON C.I.

I ACKNOWLEDGE RECEIPT THIS DATE OF A GRIEVANCE FROM THE ABOVE INMATE IN REGARD TO THE FOLLOWING SUBJECT:

DISCIPLINE

DATE	RECEIPT NUMBER	RECIPIENT'S SIGNATURE (STAFF MEMBER)
12/3/02	02-12025	 <u>LYKINS</u>
DISTRIBUTION: WHITE COPY CANARY COPY PINK COPY GOLDENROD COPY	INSTITUTION/FACILITY INMATE COPY INMATE'S FILE INMATE COPY RETAINED BY OFFICIAL RESPONDING	DISTRIBUTION: WHITE COPY CANARY COPY PINK COPY GOLDENROD COPY
		CENTRAL OFFICE INMATE COPY INMATE'S FILE - INST./FACILITY C.O. INMATE FILE RETAINED BY OFFICIAL RESPONDING

DC1-303 (Revised 8-00)

EXHIBIT A

B21215